

Appl. No. 09/909,233
Atty. Docket No. CM2505
Amdt. dated: 8/15/2005
Reply to Office Action of 5/20/05
Customer No. 27752

REMARKS/ARGUMENTS

Claims 1-10, 12, 14-16, 18-30, 41 and 42 are now under consideration. Claims 36-40 stand withdrawn.

Claim 1 has been amended to recite the mixture of smectite clay and xanthan gum. Basis is at page 14, line 5 and original Claim 31 (now cancelled as redundant). Claim 1 further recites the flow velocity of the liquid product. Basis is at original Claim 33, now cancelled as redundant.

Claim 3 has been amended to recite the formal Markush language. Claim 5 has been amended to correct a transcribing error. Claim 6 has been amended to delete the inapposite language. Claim 8 now depends from Claim 6, which depends from Claim 1. Excess verbiage has been removed from amended Claim 8, as has been done in Claim 15. The parenthetical expression has been removed from Claim 25, to place the claim in more proper form.

It is submitted that all amendments are fully supported, and entry is requested.

Formal Matters

For the record, there are no objections or rejections under 35 USC 112 outstanding.

Rejections Under 35 USC 103

Claims 1-8, 10, 12, 14-29, 33-35, 41 and 43 stand rejected over U.S. 5,929,007 in view of U.S. 6,194,362, for reasons of record at pages 5-8 of the Office Action.

Claim 30 stands rejected over '007 in view of '362, as applied above, and further in view of U.S. 5,739,092, for reasons of record at page 8 of the Office Action.

Claims 31 and 32 stand rejected over '007 in view of '362, as applied above, and further in view of JP 8151597, for reasons of record at page 8-9 of the Office Action.

Claim 9 stands rejected over '007 in view of '362, as applied above, and further in view of U.S. 6,001,789, for reasons of record at pages 9-10 of the Office Action.

Applicants respectfully traverse all of the aforesaid rejections, to the extent they may apply to the claims as now amended.

Inasmuch as Claims 31 and 32 have now been cancelled, the rejections of those claims have been obviated.

However, since the elements of Claim 32, i.e., the smectite clay/xanthan gum mixture (along with the resulting flow velocity of Claim 33) now appears in Claim 1 and, perforce, all claims ultimately depending therefrom, it is presumed that the self-same grounds for rejection would be applied.

Indeed, it is submitted that the mixed smectite/xanthan element, taken together with the other elements recited in Claims 1, *et seq.*, is a key feature (but not the sole feature) that serves to

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distinguish the present invention over all the aforesaid cited documents, taken singly or in combination.

At page 9 of the Office Action, it is noted that neither '007 nor '362 teaches the use of a smectite clay thickener in addition to the other requisite components. In order to make the §103 rejection, the Examiner turns to JP '597 for a disclosure of clay thickener, and concludes that the combination of clay/other thickeners would be obvious.

In this regard, the Examiner's attention is drawn to JP '597 (Pattera Instant Machine Translation Version at page 4). There, the patentees discuss the problems associated with the use of organic type thickeners, especially "thread pulling." See [0003]. In order to avoid such problems, the Japanese inventors instead employ clay thickeners.

In short, the message in JP '597 is: For these kinds of compositions, replace organic thickeners with clays. Clearly, nothing therein would suggest combining organic thickeners (such as xanthan) with clay.

Indeed, it is fair to say that JP '597 teaches away from organic thickeners. Accordingly, since '007 and '362 both teach organic thickeners, these documents cannot, in fact, be combined to arrive at a clay/organic thickener mixture. MPEP 2145.

In regard to the '789 patent, it is noted that this document relates to solid-form toilet bowl "blocks" of the familiar "in-tank" or "rim-block" types. Nothing therein relates to liquid compositions of any type, much less those comprising smectite clay/xanthan gum mixtures.

Indeed, it could be submitted that '789 is totally non-analogous to the present invention, were it not for the cyclodextrin disclosed in '789.

Yet, the key features of Claim 9 herein reside not only in the cyclodextrin, but, also in the system solvent (with its amine component), the clay/xanthan mixture, resulting in the requisite flow velocity, etc., all as set-forth in amended Claim 1 from which Claim 9 depends.

In summary, no combination of '789 with any of the other cited patents, taken singly or together, arrives at Claim 1 or 9, as now amended.

Moreover, since no permissible combination of '362, '007, '092 or '789 has been cited to teach or fairly suggest the conjoint use of smectite/xanthan in composition of the present type, it is submitted that all the other stated grounds for rejection must fall.

Said another way, since the only document (JP '597) cited by the Examiner for smectite clay teaches away from its use with xanthan, no combination of the other cited documents has been made that amounts to a *prima facie* case of obviousness. Absent such *prima facie* case, it is submitted that all rejections should be withdrawn.

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Culshaw U.S. 5,202,050

The Examiner's attention is directed to '050, in view of the fact that this document has been cited in companion application 09/909,288 (P&G Case CM2506).

In fact, '050 has been cited and listed on form PTO/SB08A (08-03) filed in the instant application on 2/10/04.

While '050 does teach smectite clays and also teaches xanthan (col. 6, lines 66-67) it is submitted that it does not fairly suggest their combined use in compositions of the present type. (See JP '597, above.) Note, that '050 does not teach mixtures of clay/xanthan in compositions having the other defining elements of the present compositions.

In this regard, Applicants admit that many known ingredients are employed in the present invention. However, it is settled law that mere broad-scale disclosures of myriad ingredients in the art are not dispositions of the issue of patentability under §103. *Ex parte Hiyamizu*, 10 U.S.P.Q. 2d 1393, 1394 (BPAI 1988)

Moreover, as explained by the CAFC in *Princeton Biochemicals, inc., v. Beckman Coulter, Inc.*, 04-1493, 2005 U.S. App. LEXIS 10672 (6/9/05), at page 4:

As discussed, simply identifying all of the elements in a claim in the prior art does not render a claim obvious. (Citing *Ruiz*, earlier discussed, for the proposition that the real §103 issue is whether there is motivation to combine the elements.)

In addition, in the same *Princeton* case at page 5, the CAFC considered the issue of motivation based on the "knowledge of one of skill in the art":

In In re Lee, this court expressed skepticism about invoking the knowledge of a skilled artisan to supply the motivation to combine on a scanty record. 277 F.3d 1338, 1343-44 (Fed. Cir. 2002) "This factual question of motivation . . . could not be resolved on a subjective belief and unknown authority."
[emphasis supplied]

Succinctly stated, the question of obviousness under §103 is not what the artisan could have done, but what would have been obvious for the person to do. *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 1 USPQ 2d 1081 (Fed. Cir. 1986). Absent some record evidence of a motivation to select and combine only certain of the ingredients extensively listed in any combination of the cited documents to arrive at the present invention, it is submitted that the rejections under §103 should be withdrawn.

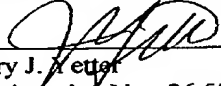
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In light of the foregoing, early and favorable action is requested.

Respectfully submitted,

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Date: August 15, 2005
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